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Google Inc.

9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN JOSE DIVISION**

13 IN RE HIGH-TECH EMPLOYEE  
14 ANTITRUST LITIGATION

Master Docket No. 11-CV-2509-LHK

**AMENDED ANSWER OF DEFENDANT  
GOOGLE INC. TO PLAINTIFFS'  
CONSOLIDATED AMENDED  
COMPLAINT**

15 THIS DOCUMENT RELATES TO:  
16 ALL ACTIONS  
17

1 Defendant Google Inc. (“Google”) hereby responds to the allegations in the Consolidated  
2 Amended Complaint (“Complaint”) filed by Plaintiffs Michael Devine, Mark Fichtner, Siddharth  
3 Hariharan, Brandon Marshall, and Daniel Stover (collectively “Plaintiffs”) as follows:

4 **I. SUMMARY OF THE ACTION**

5 1. Google admits that Plaintiffs filed this case as a class action against Google and  
6 other defendants but denies the remaining allegations contained in paragraph 1 of Plaintiffs’  
7 Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form  
8 a belief as to the truth of the allegations as they pertain to any other defendant, and on that basis  
9 denies them.

10 2. To the extent that paragraph 2 purports to state a legal conclusion, no answer is  
11 required. Google admits that this purports to be an action seeking damages under the Sherman  
12 Act, the Cartwright Act and the California Business and Professions Code. Google denies the  
13 remaining allegations contained in paragraph 2 of Plaintiffs’ Complaint as they pertain to  
14 Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the  
15 allegations as they pertain to any other defendant, and on that basis denies them.

16 3. To the extent that paragraph 3 purports to state a legal conclusion, no answer is  
17 required. Google admits that the United States Department of Justice (“DOJ”) issued a Civil  
18 Investigative Demand (“CID”) to Google in 2009 and that the DOJ filed a complaint against  
19 Defendants Adobe, Apple, Google, Intel, Intuit and Pixar, which contained the quoted  
20 allegations set forth in paragraph 3 of Plaintiffs’ Complaint. Google denies Plaintiffs’  
21 characterization of the quoted allegations in this paragraph and Plaintiffs’ allegations regarding  
22 conclusions of fact or law made by the DOJ. Google the remaining allegations contained in  
23 paragraph 3 of Plaintiffs’ Complaint as they pertain to Google, including that *per se* treatment is  
24 appropriate in this matter. Google lacks knowledge or information sufficient to form a belief as  
25 to the truth of the allegations as they pertain to any other defendant, and on that basis denies  
26 them.

27 4. Google admits that the DOJ did not seek monetary penalties against Google, but  
28 denies that any employees were harmed by Google’s conduct. Google denies the remaining

1 allegations contained in paragraph 4 of Plaintiffs' Complaint as they pertain to Google. Google  
2 lacks knowledge or information sufficient to form a belief as to the truth of the allegations as  
3 they pertain to any other defendant, and on that basis denies them.

4 **II. JURISDICTION AND VENUE**

5 5. Google admits that this purports to be an action arising under the Sherman Act,  
6 the Cartwright Act and the California Business and Professions Code, but denies that Plaintiffs  
7 are entitled to any relief thereunder.

8 6. To the extent that paragraph 6 purports to state a legal conclusion, no answer is  
9 required. Google otherwise admits the allegations contained in paragraph 6 of Plaintiffs'  
10 Complaint.

11 7. To the extent that paragraph 7 purports to state a legal conclusion, no answer is  
12 required. Google admits that venue is proper. Google lacks knowledge or information sufficient  
13 to form a belief as to the truth of the allegations as they pertain to any other defendant, and on  
14 that basis denies them.

15 8. To the extent that paragraph 8 purports to state a legal conclusion, no answer is  
16 required. Google admits that it is subject to the jurisdiction of this Court for the purposes of this  
17 action. Google lacks knowledge or information sufficient to form a belief as to the truth of the  
18 allegations as they pertain to any other defendant, and on that basis denies them.

19 **III. CHOICE OF LAW**

20 9. To the extent that paragraph 9 purports to state a legal conclusion, no answer is  
21 required. Google otherwise denies the allegations in paragraph 9 of the Complaint.

22 10. Google denies the allegations contained in paragraph 10 of Plaintiffs' Complaint  
23 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
24 to the truth of the allegations as they pertain to any other defendant, and on that basis denies  
25 them.

26 11. Google denies the allegations contained in paragraph 11 of Plaintiffs' Complaint  
27 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
28

1 to the truth of the allegations as they pertain to any other defendant, and on that basis denies  
2 them.

3 12. To the extent that paragraph 12 purports to state a legal conclusion, no answer is  
4 required. Because of the vagueness and ambiguity of Plaintiffs' allegations, Google lacks  
5 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
6 paragraph 12 of Plaintiffs' Complaint, and on that basis denies them.

7 13. To the extent that paragraph 13 purports to state a legal conclusion, no answer is  
8 required. Google does not dispute that venue is proper in the County of Santa Clara with respect  
9 to Plaintiffs but denies that any class is proper in this matter. Google otherwise denies the  
10 allegations contained in paragraph 13 of Plaintiffs' Complaint as they pertain to Google. Google  
11 lacks knowledge or information sufficient to form a belief as to the truth of the allegations as  
12 they pertain to any other defendant, and on that basis denies them.

13 14. To the extent that paragraph 14 purports to state a legal conclusion, no answer is  
14 required. Google otherwise lacks knowledge or information sufficient to form a belief as to the  
15 truth of the allegations contained in paragraph 14 of Plaintiffs' Complaint, and on that basis  
16 denies them.

17 15. To the extent that paragraph 15 purports to state a legal conclusion, no answer is  
18 required. Google otherwise lacks knowledge or information sufficient to form a belief as to the  
19 truth of the allegations contained in paragraph 15 of Plaintiffs' Complaint, and on that basis  
20 denies them.

21 **IV. THE PARTIES**

22 **A. Plaintiffs**

23 16. Google denies that Mr. Devine suffered any injury by reason of the allegations in  
24 the Complaint and otherwise denies the allegations contained in paragraph 16 of Plaintiffs'  
25 Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form  
26 a belief as to the truth of the allegations as they pertain to any other party, and on that basis  
27 denies them.

17. Google denies that Mr. Fichtner suffered any injury by reason of the allegations in the Complaint and otherwise denies the allegations contained in paragraph 17 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to any other party, and on that basis denies them.

18. Google denies that Mr. Hariharan suffered any injury by reason of the allegations in the Complaint and otherwise denies the allegations contained in paragraph 18 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to any other party, and on that basis denies them.

19. Google denies that Mr. Marshall suffered any injury by reason of the allegations in the Complaint and otherwise denies the allegations contained in paragraph 19 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to any other party, and on that basis denies them.

20. Google denies that Mr. Stover suffered any injury by reason of the allegations in the Complaint and otherwise denies the allegations contained in paragraph 20 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to any other party, and on that basis denies them.

## B. Defendants

21. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of Plaintiffs' Complaint, and on that basis denies them.

22. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of Plaintiffs' Complaint, and on that basis denies them.

1           23. Google admits the allegations contained in paragraph 23 of Plaintiffs' Complaint.

2           24. Google lacks knowledge or information sufficient to form a belief as to the truth  
3 of the allegations contained in paragraph 24 of Plaintiffs' Complaint, and on that basis denies  
4 them.

5           25. Google lacks knowledge or information sufficient to form a belief as to the truth  
6 of the allegations contained in paragraph 25 of Plaintiffs' Complaint, and on that basis denies  
7 them.

8           26. Google lacks knowledge or information sufficient to form a belief as to the truth  
9 of the allegations contained in paragraph 26 of Plaintiffs' Complaint, and on that basis denies  
10 them.

11           27. Google lacks knowledge or information sufficient to form a belief as to the truth  
12 of the allegations contained in paragraph 27 of Plaintiffs' Complaint, and on that basis denies  
13 them.

14           28. Google denies that it participated in any alleged conspiracy or violation of law.  
15 Google lacks knowledge or information sufficient to form a belief as to the truth of the  
16 allegations as they pertain to any other Defendants or unnamed DOES, and on that basis denies  
17 the allegations in paragraph 28.

18           29. Google denies that it participated in any alleged conspiracy or violation of law.  
19 Google lacks knowledge or information sufficient to form a belief as to the truth of the  
20 allegations as they pertain to any other Defendants or unnamed DOES, and on that basis denies  
21 the allegations in paragraph 29.

22 **V. CLASS ACTION ALLEGATIONS**

23           30. To the extent that paragraph 30 purports to state a legal conclusion, no answer is  
24 required. Google admits that Plaintiffs purport to bring this action on behalf of themselves and  
25 others, but otherwise denies the allegations in paragraph 30.

26           31. Google lacks knowledge or information sufficient to form a belief as to the truth  
27 of the allegations contained in paragraph 31 of the Complaint, and on that basis denies them.  
28

32. Google denies the allegations contained in paragraph 32 of Plaintiffs' Complaint.

33. Google denies the allegations contained in paragraph 33 of Plaintiffs' Complaint.

34. Google denies the allegations contained in paragraph 34 of Plaintiffs' Complaint.

35. Google denies the allegations contained in paragraph 35 of Plaintiffs' Complaint.

36. Google denies the allegations contained in paragraph 36 of Plaintiffs' Complaint.

37. Plaintiffs have withdrawn their request for injunctive relief, so no response is necessary. Google otherwise denies the allegations contained in paragraph 37 of Plaintiffs' Complaint.

38. Google denies the allegations contained in paragraph 38 of Plaintiffs' Complaint.

## **VI. FACTUAL ALLEGATIONS**

39. Google admits that it employed putative Class members in California, and in some other states, during the Class Period, as the putative Class is defined in Plaintiffs' Complaint. Google lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations as they pertain Google or to any other defendant, and on that basis denies them.

40. Google denies the allegations contained in paragraph 40 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to any other party, and on that basis denies them.

41. Google admits that cold calling is one method it may use to recruit employees, but denies that it used the definition of cold calling alleged in paragraph 41 of Plaintiffs' Complaint, and therefore denies the allegations in this paragraph on that basis. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to any other defendant, and on that basis denies them.

42. Google denies that it used the definition of cold calling alleged in Plaintiffs' Complaint and therefore denies the allegations in this paragraph on that basis. Google otherwise denies the allegations in paragraph 42 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to any

1 other defendant, and on that basis denies them.

2 43. Because of the vagueness and ambiguity of Plaintiffs' allegations in paragraph 43  
3 of the Complaint, Google lacks knowledge or information sufficient to form a belief about the  
4 truth of these allegations and on that basis denies them.

5 44. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to  
6 Google's and others' conduct in paragraph 44 of the Complaint, Google lacks knowledge or  
7 information sufficient to form a belief about the truth of these allegations and on that basis denies  
8 them.

9 45. Google admits that cold calling is one method it may use to recruit employees, but  
10 denies that it used the definition of cold calling alleged in Plaintiffs' Complaint, and therefore  
11 denies the allegations in this paragraph on that basis. Google otherwise denies the allegations in  
12 paragraph 45 as they pertain to Google. Google lacks knowledge or information sufficient to  
13 form a belief as to the truth of the allegations as they pertain to any other defendant or third  
14 party, and on that basis denies them.

15 46. Google admits that cold calling is one method it may use to recruit employees, but  
16 denies that it used the definition of cold calling alleged in Plaintiffs' Complaint, and therefore  
17 denies the allegations in this paragraph on that basis. Because of the vagueness and ambiguity of  
18 Plaintiffs' remaining allegations relating to Google's and others' conduct in paragraph 46 of the  
19 Complaint, Google lacks knowledge or information sufficient to form a belief about the truth of  
20 these allegations and on that basis denies them.

21 47. Google lacks knowledge or information sufficient to form a belief about the truth  
22 of the allegations in paragraph 47 of the Complaint and on that basis denies them.

23 48. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to  
24 Google's and others' conduct in paragraph 48 of the Complaint, Google lacks knowledge or  
25 information sufficient to form a belief about the truth of these allegations and on that basis denies  
26 them.

27 49. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to  
28



1 Google's and others' conduct in paragraph 49 of the Complaint, Google lacks knowledge or  
2 information sufficient to form a belief about the truth of these allegations and on that basis denies  
3 them.

4 50. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to  
5 Google's and others' conduct in paragraph 50 of the Complaint, Google lacks knowledge or  
6 information sufficient to form a belief about the truth of these allegations and on that basis denies  
7 them.

8 51. Google denies that the alleged goals accurately or fully reflect Google's goals  
9 with respect to compensation, and on that basis denies the allegations in paragraph 51 of the  
10 Complaint.

11 52. Google denies that the alleged practices in paragraph 52 fully or accurately reflect  
12 Google's compensation practices or that the alleged goals in paragraph 51 fully or accurately  
13 reflect Google's goals with respect to compensation, and on that basis denies the allegations in  
14 paragraph 52 of the Complaint.

15 53. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to  
16 Google's and others' conduct in paragraph 53 of the Complaint, Google lacks knowledge or  
17 information sufficient to form a belief about the truth of these allegations and on that basis denies  
18 them.

19 54. Google denies that it used the definition of cold calling alleged in Plaintiffs'  
20 Complaint, and therefore denies the allegations in this paragraph on that basis. Google denies  
21 the remaining allegations in paragraph 54 of the Complaint as they pertain to Google. Google  
22 lacks knowledge or information sufficient to form a belief as to the truth of the allegations as  
23 they pertain to any other defendant, and on that basis denies them.

24 55. Google denies the allegations contained in paragraph 55 of Plaintiffs' Complaint  
25 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
26 to the truth of the allegations as they pertain to any other party, and on that basis denies them.

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1           56. Google lacks knowledge or information sufficient to form a belief as to the truth  
2 of the allegations contained in paragraph 56 of Plaintiffs' Complaint, and on that basis denies  
3 them.

4           57. Google lacks knowledge or information sufficient to form a belief as to the truth  
5 of the allegations contained in paragraph 57 of Plaintiffs' Complaint, and on that basis denies  
6 them.

7           58. Google lacks knowledge or information sufficient to form a belief as to the truth  
8 of the allegations contained in paragraph 58 of Plaintiffs' Complaint, and on that basis denies  
9 them.

10          59. Google lacks knowledge or information sufficient to form a belief as to the truth  
11 of the allegations contained in paragraph 59 of Plaintiffs' Complaint, and on that basis denies  
12 them.

13          60. Google lacks knowledge or information sufficient to form a belief as to the truth  
14 of the allegations contained in paragraph 60 of Plaintiffs' Complaint, and on that basis denies  
15 them.

16          61. Google lacks knowledge or information sufficient to form a belief as to the truth  
17 of the allegations contained in paragraph 61 of Plaintiffs' Complaint, and on that basis denies  
18 them.

19          62. Google lacks knowledge or information sufficient to form a belief as to the truth  
20 of the allegations contained in paragraph 62 of Plaintiffs' Complaint, and on that basis denies  
21 them.

22          63. Google lacks knowledge or information sufficient to form a belief as to the truth  
23 of the allegations contained in paragraph 63 of Plaintiffs' Complaint, and on that basis denies  
24 them.

25          64. Google lacks knowledge or information sufficient to form a belief as to the truth  
26 of the allegations contained in paragraph 64 of Plaintiffs' Complaint, and on that basis denies  
27 them.

28

1           65. Google lacks knowledge or information sufficient to form a belief as to the truth  
2 of the allegations contained in paragraph 65 of Plaintiffs' Complaint, and on that basis denies  
3 them.

4           66. Google lacks knowledge or information sufficient to form a belief as to the truth  
5 of the allegations contained in paragraph 66 of Plaintiffs' Complaint, and on that basis denies  
6 them.

7           67. Google lacks knowledge or information sufficient to form a belief as to the truth  
8 of the allegations contained in paragraph 67 of Plaintiffs' Complaint, and on that basis denies  
9 them.

10          68. Google lacks knowledge or information sufficient to form a belief as to the truth  
11 of the allegations contained in paragraph 68 of Plaintiffs' Complaint, and on that basis denies  
12 them.

13          69. Google lacks knowledge or information sufficient to form a belief as to the truth  
14 of the allegations contained in paragraph 69 of Plaintiffs' Complaint, and on that basis denies  
15 them.

16          70. Google lacks knowledge or information sufficient to form a belief as to the truth  
17 of the allegations contained in paragraph 70 of Plaintiffs' Complaint, and on that basis denies  
18 them.

19          71. Google lacks knowledge or information sufficient to form a belief as to the truth  
20 of the allegations contained in paragraph 71 of Plaintiffs' Complaint, and on that basis denies  
21 them.

22          72. Google lacks knowledge or information sufficient to form a belief as to the truth  
23 of the allegations contained in paragraph 72 of Plaintiffs' Complaint, and on that basis denies  
24 them.

25          73. Google lacks knowledge or information sufficient to form a belief as to the truth  
26 of the allegations contained in paragraph 73 of Plaintiffs' Complaint, and on that basis denies  
27 them.

1           74. Google lacks knowledge or information sufficient to form a belief as to the truth  
2 of the allegations contained in paragraph 74 of Plaintiffs' Complaint, and on that basis denies  
3 them.

4           75. Google lacks knowledge or information sufficient to form a belief as to the truth  
5 of the allegations contained in paragraph 75 of Plaintiffs' Complaint, and on that basis denies  
6 them.

7           76. Google lacks knowledge or information sufficient to form a belief as to the truth  
8 of the allegations contained in paragraph 76 of Plaintiffs' Complaint, and on that basis denies  
9 them.

10          77. Google lacks knowledge or information sufficient to form a belief as to the truth  
11 of the allegations contained in paragraph 77 of Plaintiffs' Complaint, and on that basis denies  
12 them.

13          78. Google lacks knowledge or information sufficient to form a belief as to the truth  
14 of the allegations contained in paragraph 78 of Plaintiffs' Complaint, and on that basis denies  
15 them.

16          79. Google admits that Arthur D. Levinson sat on the boards of both Apple and  
17 Google. Google denies that it used the definition of cold calling alleged in Plaintiffs' Complaint,  
18 and therefore denies the allegations related to cold-calling in this paragraph on that basis.  
19 Because of the vagueness and ambiguity of Plaintiffs' allegations that Google and Apple  
20 "expressly agreed" not to cold call each other's employees, Google lacks knowledge or  
21 information sufficient to form a belief about the truth of these allegations and on that basis denies  
22 them. Google denies the remaining allegations in paragraph 79 as they pertain to Google.  
23 Google lacks knowledge or information sufficient to form a belief as to the truth of the  
24 allegations as they pertain to Apple, and on that basis denies them.

25          80. Google denies the allegations in paragraph 80 of Plaintiffs' Complaint.

26          81. Google denies the allegations in paragraph 81 of Plaintiffs' Complaint.

27          82. Google denies the allegations contained in paragraph 82 of Plaintiffs' Complaint  
28

1 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
2 to the truth of the allegations as they pertain to Apple, and on that basis denies them.

3 83. Google denies that it acted to “ensure compliance” with any alleged bilateral  
4 agreement, and denies the allegations in paragraph 83 on that basis. Google denies that it used  
5 the definition of cold calling alleged in Plaintiffs’ Complaint, and therefore denies the allegations  
6 related to cold-calling in this paragraph on that basis. Google does not dispute that venue is  
7 proper in the County of Santa Clara. Google lacks knowledge or information sufficient to form a  
8 belief as to the truth of the allegations as they pertain to Apple, and on that basis denies them.

9 84. Google admits that an Apple employee contacted Google regarding recruitment  
10 efforts by Google and that Google investigated these complaints. Because of the vagueness and  
11 ambiguity of Plaintiffs’ allegations relating to an “express” or “explicit” agreement between  
12 Google and Apple, Google lacks knowledge or information sufficient to form a belief about the  
13 truth of these allegations and on that basis denies them. Google denies the remaining allegations  
14 in paragraph 84 as they pertain to Google. Google lacks knowledge or information sufficient to  
15 form a belief as to the truth of the allegations as they pertain to Apple, and on that basis denies  
16 them.

17 85. Google denies the allegations contained in paragraph 85 of Plaintiffs’ Complaint  
18 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
19 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

20 86. Google lacks knowledge or information sufficient to form a belief as to the truth  
21 of the allegations contained in paragraph 86 of Plaintiffs’ Complaint, and on that basis denies  
22 them.

23 87. Google lacks knowledge or information sufficient to form a belief as to the truth  
24 of the allegations contained in paragraph 87 of Plaintiffs’ Complaint, and on that basis denies  
25 them.

26 88. Google lacks knowledge or information sufficient to form a belief as to the truth  
27 of the allegations contained in paragraph 88 of the Complaint, and on that basis denies them.

1           89. Google lacks knowledge or information sufficient to form a belief as to the truth  
2 of the allegations contained in paragraph 89 of Plaintiffs' Complaint, and on that basis denies  
3 them.

4           90. Google lacks knowledge or information sufficient to form a belief as to the truth  
5 of the allegations contained in paragraph 90 of Plaintiffs' Complaint, and on that basis denies  
6 them.

7           91. Google lacks knowledge or information sufficient to form a belief as to the truth  
8 of the allegations contained in paragraph 91 of Plaintiffs' Complaint, and on that basis denies  
9 them.

10          92. Google lacks knowledge or information sufficient to form a belief as to the truth  
11 of the allegations contained in paragraph 92 of Plaintiffs' Complaint, and on that basis denies  
12 them.

13          93. Google lacks knowledge or information sufficient to form a belief as to the truth  
14 of the allegations contained in paragraph 93 of Plaintiffs' Complaint, and on that basis denies  
15 them.

16          94. Google lacks knowledge or information sufficient to form a belief as to the truth  
17 of the allegations contained in paragraph 94 of Plaintiffs' Complaint, and on that basis denies  
18 them.

19          95. Google lacks knowledge or information sufficient to form a belief as to the truth  
20 of the allegations contained in paragraph 95 of Plaintiffs' Complaint, and on that basis denies  
21 them.

22          96. Google lacks knowledge or information sufficient to form a belief as to the truth  
23 of the allegations contained in paragraph 96 of Plaintiffs' Complaint, and on that basis denies  
24 them.

25          97. Google admits the allegations contained in paragraph 97 of Plaintiffs' Complaint.

26          98. Google denies that it used the definition of cold calling alleged in Plaintiffs'  
27 Complaint, and therefore denies the allegations related to cold-calling in this paragraph on that  
28

1 basis. Because of the vagueness and ambiguity of Plaintiffs' allegations that Google and Intel  
2 "expressly agreed," not to cold call each other's employees, Google lacks knowledge or  
3 information sufficient to form a belief about the truth of these allegations and on that basis denies  
4 them. Google denies the remaining allegations in paragraph 98 of Plaintiffs' Complaint as they  
5 pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the  
6 truth of the allegations as they pertain to other defendants, and on that basis denies them.

7 99. Google denies the allegations in paragraph 99 of Plaintiffs' Complaint.

8 100. Google denies the allegations in paragraph 100 as they pertain to Google.  
9 Google lacks knowledge or information sufficient to form a belief as to the truth of the  
10 allegations as they pertain to Intel, and on that basis denies them.

11 101. Google does not dispute that venue is proper in the County of Santa Clara.  
12 Google denies that it acted to "ensure compliance" with any alleged bilateral agreement, and  
13 denies the allegations in paragraph 101 on that basis. Google denies that it used the definition of  
14 cold calling alleged in Plaintiffs' Complaint, and therefore denies the allegations related to cold-  
15 calling in this paragraph on that basis. Google lacks knowledge or information sufficient to form  
16 a belief as to the truth of the allegations as they pertain to Intel, and on that basis denies them.

17 102. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to an  
18 "express" or "explicit" agreement between Google and Intel, Google lacks knowledge or  
19 information sufficient to form a belief about the truth of these allegations and on that basis denies  
20 them. Google lacks knowledge or information sufficient to form a belief as to the truth of the  
21 allegations as they pertain to Intel, and on that basis denies them.

22 103. Google admits that as of June 2007, Eric Schmidt sat on Apple's board of  
23 directors and Arthur Levinson sat on the boards of Apple and Google. Google denies the  
24 remaining allegations in paragraph 103 as they pertain to Google. Google lacks knowledge or  
25 information sufficient to form a belief as to the truth of the allegations as they pertain to other  
26 defendants, and on that basis denies them.

27 104. Google denies that it used the definition of cold calling alleged in Plaintiffs'  
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1 Complaint, and therefore denies the allegations related to cold-calling in this paragraph on that  
2 basis. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to an "explicit  
3 agreement" between Google and Intuit, Google lacks knowledge or information sufficient to  
4 form a belief about the truth of these allegations and on that basis denies them. Google denies  
5 the remaining allegations contained in paragraph 104 of Plaintiffs' Complaint as they pertain to  
6 Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the  
7 allegations as they pertain to Intuit, and on that basis denies them.

8 105. Google denies the allegations in paragraph 105 as they pertain to Google. Google  
9 lacks knowledge or information sufficient to form a belief as to the truth of the allegations as  
10 they pertain to Intuit, and on that basis denies them.

11 106. Google denies that it acted to "ensure compliance" with any alleged bilateral  
12 agreement, and denies the allegations in paragraph 106 on that basis. Google denies that it used  
13 the definition of cold calling alleged in Plaintiffs' Complaint, and therefore denies the allegations  
14 related to cold-calling in this paragraph on that basis. Google lacks knowledge or information  
15 sufficient to form a belief as to the truth of the allegations as they pertain to Intuit, and on that  
16 basis denies them.

17 107. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to an  
18 "express" or "explicit" agreement between Google and Intuit, Google lacks knowledge or  
19 information sufficient to form a belief about the truth of these allegations and on that basis denies  
20 them. Google lacks knowledge or information sufficient to form a belief as to the truth of the  
21 allegations as they pertain to Intuit, and on that basis denies them.

22 108. Google denies the allegations contained in paragraph 108 of Plaintiffs' Complaint  
23 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
24 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

25 109. Google denies the allegations contained in paragraph 109 of Plaintiffs' Complaint  
26 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
27 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.  
28



1           110. Google denies the allegations contained in paragraph 110 of Plaintiffs' Complaint  
2 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
3 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

4           111. Google admits that the DOJ issued a CID to Google in 2009 in connection with an  
5 investigation, that Google produced documents to the DOJ in response to that CID. Google  
6 denies the remaining allegations contained in paragraph 111 of Plaintiffs' Complaint as they  
7 pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the  
8 truth of the allegations as they pertain to other defendants, and on that basis denies them.

9           112. Google admits that the DOJ filed a complaint against Defendants Adobe, Apple,  
10 Google, Intel, Intuit and Pixar, which contained the quoted allegations set forth in paragraph 112  
11 of Plaintiffs' Complaint. Google denies the remaining allegations contained in paragraph 112 of  
12 Plaintiffs' Complaint, including the allegations related to factual or legal findings made by the  
13 DOJ.

14           113. Google admits that the DOJ filed a complaint against Defendants Adobe, Apple,  
15 Google, Intel, Intuit and Pixar, which contained the quoted allegations set forth in paragraph 113  
16 of Plaintiffs' Complaint. Google denies the remaining allegations contained in paragraph 113 of  
17 Plaintiffs' Complaint, including the allegations related to factual or legal findings made by the  
18 DOJ.

19           114. Google admits that the DOJ filed a complaint on September 24, 2010 against  
20 Defendants Adobe, Apple, Google, Intel, Intuit and Pixar, alleging that each defendant  
21 participated in at least one agreement in violation of Section One of the Sherman Act and that, in  
22 connection with a settlement with the DOJ, the DOJ filed a stipulated proposed final judgment,  
23 which, for purposes of jurisdiction, contained the quoted language set forth in paragraph 114 of  
24 Plaintiffs' Complaint. Google denies the remaining allegations contained in paragraph 114 of  
25 Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information  
26 sufficient to form a belief as to the truth of the allegations as they pertain to other defendants,  
27 and on that basis denies them.

115. Google admits it entered into a settlement with the DOJ and that stipulated final judgments were entered by the United States District Court. The Final Judgment speaks for itself. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

116. Google admits that on September 24, 2010, Amy Lambert, Associate General Counsel, Employment, made the quoted statements alleged in paragraph 116 of the Complaint. Google denies the remaining allegations contained in this paragraph as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

117. Google admits that the DOJ did not seek monetary penalties against defendants, but denies the remaining the allegations in paragraph 117.

118. Google denies the allegations contained in paragraph 118 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

### FIRST CLAIM FOR RELIEF

(Violations of Section 1 of the Sherman Act, 15 U.S.C. § 1)

119. Google incorporates by reference and re-alleges its responses to paragraphs 1 through 118 as if fully set forth herein.

120. Google denies the allegations contained in paragraph 120 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

121. Google denies the allegations contained in paragraph 121 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

122. Google denies the allegations contained in paragraph 122 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

123. Google denies the allegations contained in paragraph 123 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

124. Google denies the allegations contained in paragraph 124 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

125. Google denies the allegations contained in paragraph 125 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

126. Google admits that Plaintiffs seek the relief alleged in the Complaint but denies that Plaintiffs are entitled to any relief. Google denies the remaining allegations contained in paragraph 126 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

## **SECOND CLAIM FOR RELIEF**

(Violations of the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720, et seq.)

127. Google incorporates by reference and re-alleges its responses to paragraphs 1 through 126 as if fully set forth herein.

128. Google denies the allegations contained in paragraph 128 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

129. Google denies the allegations contained in paragraph 129 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

130. Google denies the allegations contained in paragraph 130 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

1           131. Google denies the allegations contained in paragraph 131 of Plaintiffs' Complaint  
2 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
3 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

4           132. Paragraph 132 purports to state a legal conclusion and no answer is required.  
5 Google otherwise denies that Plaintiffs have properly alleged a class under the Cartwright Act.

6           133. Google denies the allegations contained in paragraph 133 of Plaintiffs' Complaint  
7 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
8 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

9           134. Google denies the allegations contained in paragraph 134 of Plaintiffs' Complaint  
10 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
11 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

12           135. Google admits that Plaintiffs seek the relief alleged in the Complaint but denies  
13 that Plaintiffs are entitled to any relief. Google denies the remaining allegations contained in  
14 paragraph 135 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or  
15 information sufficient to form a belief as to the truth of the allegations as they pertain to other  
16 defendants, and on that basis denies them.

### 17                                   **THIRD CLAIM FOR RELIEF**

18                                   (Violations of Cal. Bus. & Prof. Code § 16600)

19           136. This claim, encompassing paragraphs 136-143 of Plaintiffs' Complaint, has been  
20 dismissed, thus no response is necessary. *See* Docket No. 111.

### 21                                   **FOURTH CLAIM FOR RELIEF**

22                                   (Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, et seq.)

23           144. This claim, encompassing paragraphs 144-152 of Plaintiffs' Complaint, has been  
24 dismissed, thus no response is necessary. *See* Docket No. 119.

### 25                                   **PRAYER FOR RELIEF**

26           153. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no  
27 response. Otherwise, Google denies the allegations contained in paragraph 153 of Plaintiffs'  
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1 Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the  
2 judgment and relief requested in this Prayer for Relief.

3 154. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no  
4 response. Otherwise, Google denies the allegations contained in paragraph 154 of Plaintiffs'  
5 Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form  
6 a belief as to the truth of the allegations as they pertain to other defendants, and on that basis  
7 denies them.

8 155. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no  
9 response. Otherwise, Google denies the allegations contained in paragraph 155 of Plaintiffs'  
10 Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the  
11 judgment and relief requested in this Prayer for Relief.

12 156. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no  
13 response. Otherwise, Google denies the allegations contained in paragraph 156 of Plaintiffs'  
14 Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the  
15 judgment and relief requested in this Prayer for Relief.

16 157. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no  
17 response. Otherwise, Google denies the allegations contained in paragraph 157 of Plaintiffs'  
18 Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the  
19 judgment and relief requested in this Prayer for Relief.

20 158. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no  
21 response. Otherwise, Google denies the allegations contained in paragraph 158 of Plaintiffs'  
22 Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the  
23 judgment and relief requested in this Prayer for Relief.

24 159. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no  
25 response. Otherwise, Google denies the allegations contained in paragraph 159 of Plaintiffs'  
26 Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the  
27 judgment and relief requested in this Prayer for Relief.

162. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no response. Otherwise, Google denies the allegations contained in paragraph 162 of Plaintiffs' Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the judgment and relief requested in this Prayer for Relief.

163. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no response. Otherwise, Google denies the allegations contained in paragraph 163 of Plaintiffs' Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the judgment and relief requested in this Prayer for Relief.

164. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no response. Otherwise, Google denies the allegations contained in paragraph 164 of Plaintiffs' Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the judgment and relief requested in this Prayer for Relief.

Google acknowledges that Plaintiffs have requested a trial by jury on all issues so triable.

In further answer to the Complaint, Google alleges the following additional defenses. In asserting these defenses, Google does not assume the burden of proof as to matters that, pursuant to law, are Plaintiffs' burden to prove.

1 **FIRST AFFIRMATIVE DEFENSE**

2 (Statutes of Limitations)

3 1. Plaintiffs' claims are barred, in whole or part, by the applicable statutes of  
4 limitations. Plaintiffs' claims are subject to four year statutes of limitations. Plaintiff Hariharan  
5 filed his initial complaint against Defendants on May 4, 2011. Plaintiffs Devine, Marshall and  
6 Fichtner subsequently filed complaints against Defendants alleging the same violations. On  
7 September 13, 2011, Plaintiffs filed their Complaint against Defendants in the United States  
8 District Court for the Northern District of California. Plaintiffs allege claims on behalf of a  
9 putative class beginning January 1, 2005 and allege injuries to at least some class members  
10 occurring prior to May 4, 2007, outside of the applicable statutes of limitations. The claims of  
11 Plaintiffs and the putative class are therefore barred to the extent they are brought outside the  
12 applicable four-year limitations period.

13 **SECOND AFFIRMATIVE DEFENSE**

14 (Waiver)

15 2. Plaintiffs' claims are barred, in whole or part, by the doctrine of waiver. Upon  
16 information and belief, at relevant times, some purported class members, upon resignation or  
17 termination of employment from a Defendant, have entered into agreements including a waiver  
18 of the right to assert claims related to that employment. Upon information and belief, Google  
19 alleges that these members of the putative class have thereby knowingly relinquished their right  
20 to assert all such claims, including the claims asserted in the Complaint.

21 **THIRD AFFIRMATIVE DEFENSE**

22 (Failure to Exhaust Contractual Remedies)

23 3. Plaintiffs' claims are barred, in whole or part, to the extent that any plaintiff or  
24 member of the putative class failed to exhaust all applicable contractual remedies. Specifically,  
25 at relevant times, some putative class members employed by one or more Defendants were  
26 subject to an employment agreement to arbitrate any disputes related to that employment. Upon  
27 information and belief, Google alleges that the Plaintiffs' and/or putative class members' claims  
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1 are therefore barred to the extent they agreed to mandatory arbitration or chose a different forum  
2 or mechanism for the resolution of their claims, including some or all of the claims asserted in  
3 the Complaint.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 (Settlement and Release)

6 4. Plaintiffs' claims are barred, in whole or part, to the extent that any plaintiff or  
7 member of the putative class executed a settlement and release of such claims. Upon  
8 information and belief, at relevant times, some purported class members, upon resignation or  
9 termination of employment from a Defendant, have entered into agreements including a release  
10 of all claims related to that employment. Upon information and belief, Google alleges that these  
11 members of the putative class have thereby knowingly relinquished their right to assert all such  
12 claims, including the claims asserted in the Complaint.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 (Failure to Mitigate Damages)

15 5. Upon information and belief, Google alleges that Plaintiffs and members of the  
16 putative class failed to mitigate their alleged damages at or within a reasonable time after the  
17 occurrence of the violations alleged in the Complaint. At least some of the Defendants had  
18 policies and/or agreements regarding cold calling that were widely internally communicated and  
19 well-known to many employees within those companies. Therefore, at least some purported  
20 class members knew about the alleged conduct during the class period. These purported class  
21 members had the ability to actively seek employment at other companies, including other  
22 Defendants, (by, *inter alia*, submitting a resume or otherwise indicating interest in employment),  
23 to research compensation at other companies, and/or to learn about employment opportunities at  
24 other companies. None of the alleged agreements restricted purported class members from  
25 engaging in such activities, nor did any of the alleged agreements prevent a Defendant from  
26 hiring a purported class member who actively sought employment. To the extent Plaintiffs

27 ///



1 and/or any putative class members failed to take such steps to mitigate their alleged damages,  
2 any damages awarded should be reduced accordingly.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 (Intervening Acts and/or Omissions)

5 6. Plaintiffs' claims are barred, in whole or part, because injuries alleged were  
6 caused in whole or in part by the conduct of third parties for whom Google was not responsible,  
7 through forces in the marketplace over which Google had no control, or through acts or  
8 omissions on the part of Plaintiffs. In the alternative, any damages which Plaintiffs or the  
9 putative class may be entitled to recover against Google must be reduced to  
10 the extent that such damages are attributable to persons or entities other than Google (including,  
11 without limitation, Plaintiffs and the putative class).

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 (Offset)

14 7. Upon information and belief, Google alleges that Plaintiffs' claims are barred, in  
15 whole or in part, to the extent that any claimed injury or damages have been offset by benefits  
16 received as a consequence of the alleged challenged conduct. To the extent that any Defendant  
17 chose not to actively solicit employees from another Defendant, Google alleges upon  
18 information and belief that other individuals, including purported class members, were solicited  
19 by Defendants to fill those job openings and that other individuals, including purported class  
20 members, applied for positions with Defendants, and some of those who were solicited or  
21 otherwise applied were eventually hired. To the extent any purported class member was hired  
22 and therefore may have benefitted from the challenged conduct, Plaintiffs' and purported class  
23 members' claims or damages may be barred or reduced accordingly.

24 **ADDITIONAL RESPONSE**

25 8. Google currently has insufficient information upon which to form a belief as to  
26 whether it may have additional, as yet unstated, defenses, based upon the allegations in  
27 Plaintiffs' Complaint. Google reserves the right to assert additional defenses in the event they  
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1 become available or applicable by discovery of additional facts or subsequent court rulings.  
2 Google further adopts defenses asserted by any other Defendant(s) to the extent they become  
3 available or applicable by discovery of additional facts or subsequent court rulings.

4 9. Google denies that Plaintiffs have been injured in any way by its conduct or that  
5 they are entitled to any of the relief prayed for or alleged elsewhere in the Complaint.

6 WHEREFORE, Google prays:

- 7 1. That Plaintiffs' Complaint be dismissed with prejudice;  
8 2. That Plaintiffs take nothing by reason thereof;  
9 3. That judgment be entered in favor of Google;  
10 4. That Google be awarded its costs (including any attorneys' fees and expert fees to  
11 the extent permitted by applicable law) incurred in its defense of this action; and  
12 5. For such other and further relief as the Court deems just and proper.

13  
14 Dated: July 5, 2012

MAYER BROWN LLP

15  
16 By: /s/ Lee H. Rubin  
17 Lee H. Rubin  
18 Attorneys for Defendant  
19 GOOGLE INC.  
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